

EXHIBIT E

From: Diane Wizig
To: Burkett McInturff; Ethan Roman; Matt Matthews; James Chambers; David Villarreal; Netra Sreeprakash; Steven Wittels; Tiasha Palikovic; Nathan Rice
Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class
Date: Tuesday, September 26, 2023 3:30:53 PM
Attachments: [image001.png](#)

Burkett,

For ease of reference, I copied your statements and added our responses in-line here **in red**.

1. **Admin Declaration:** We are still in the process of selecting an administrator and will send you a draft of the declaration as soon as it is ready. Please note, however, that as previously discussed because the declaration tracks the contents of the letter and proposed order, it makes more sense for the parties to first work on those documents before ironing out the administrator declaration.

We will review the draft you sent and provide our comments shortly.

2. **Proposed Order:** We accepted the majority of your comments, including not issuing press releases in connection with the notice campaign, but cannot accept a 30-business day lag between approval of the notice plan and Defendants' provision of the Class List. All of the Notice Plan's other milestones are keyed off of when the Class List is provided. We can agree to 10 business days, which is more than enough time for Defendants to compile the Class List and perform the necessary quality control measures. If Defendants insist on more time, they will need to ask that the Court enter a different date. On the issue of translating the website and call center into Spanish. Please keep in mind that as a court in Brooklyn, Judges Reyes and Ross are accustomed to approving notice in the many languages spoken by New Yorkers. Accordingly, because we are translating the Notice into Spanish, the website and hotline need to also be translated. Not doing so will strike the Court as unfair because it is.

10 business days to produce the Class List is not a reasonable demand in response to our client's view that 30 business days is necessary to gather this information and verify its accuracy. If you can agree to 20 business days then we will go back to our client to see if they can move resources around to accomplish that tighter deadline.

3. **Letter Motion:** Minor redline attached. The main thing we did was move Defendants' contingent approval of the Notice Plan to a footnote. The Spanish issue is also reflected in our redlines.

You did more than move our contingent approval to a footnote. Please revise the footnote so that it mirrors our statement.

4. **Long Form Notice:** Redline attached. We cannot agree to delete XOOM's logo. The FJC guides that "a picture or diagram may help [the] class self-identify as members, or otherwise determine whether they are included" and that parties should "[c]onsider a graphic to help readers understand that they are included." Xoom's logo is the only graphic that accomplishes this.

You do not have XOOM's permission to use its copyrighted logo in the notices or on the

website. Courts in the Second Circuit regularly agree with our position that a logo in a class notice is not appropriate, and indeed constitutes a copyright violation when included without permission. *See Hong v. Haiku @ WP Inc.*, 582 F. Supp. 3d 117, 135 (S.D.N.Y. 2022) (“[T]he Court does not grant Plaintiff’s requests to add QR codes, to use Defendants’ logo, to post the notice on Plaintiff’s counsel’s website, or to distribute the notice through Defendants’ pay envelopes. The Court is unpersuaded that such means are necessary, and shares many of the concerns expressed by other courts in the Second Circuit in response to such requests.”); *Panora v. Deenora Corp.*, 521 F. Supp. 3d 177, 180 (E.D.N.Y. 2021) (“First, the prominent display of Dee’s logo is particularly egregious. Separate and apart from whether the unauthorized use of the logo constitutes a copyright violation, the logo’s presence is intended to send a message to recipients that this is an important mailing The logo thus induces the employee to open and read closely a mailing that they might otherwise ignore.”). By contrast, the FJC guidance you cite is not binding, and the sample notices in that guidance confirm that a logo is neither expected nor necessary even by the FJC’s standard.

The addition of “by XOOM separately or” in Paragraph 12 is misleading. As you know, and as reflected in your original draft, there is no basis for a separate award of attorneys’ fees in this case. Please delete it.

5. **Short Form Notice:** Other than the logo issue mentioned above, we made only a minor wordsmithing change. As for the font size, let’s keep it at 12 point for this submission so the Court can read it. The Administrator will adjust the font size to fit the appropriate format (postcard or email).

We have the same objection to including XOOM’s copyrighted logo in the short form notice as the long form. As to the font size, keeping it as 12-point for the court is fine if you clarify in the notice plan that the mailing will be on a postcard.

6. **Charge Data:** Rather than debate the content of our call over email, suffice it to say that I did not agree to produce the charge data now nor have plaintiffs ever explained why doing so is necessary or appropriate. Gathering this data following the court order last February expended an exorbitant amount of XOOM’s resources for several months. It is unnecessarily burdensome to expect XOOM to go through that process now to produce the charge data when you are inevitably going to demand we update it again later. If you are going to continue to insist on its production in the short-term, then please explain why you need it and why the burden on XOOM is proportionate to that need.

Diane S. Wizig
Partner
McDowell Hetherington LLP
P: 713-333-5889 F: 713-337-8850

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information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your system.

From: Burkett McInturff <jbm@wittelslaw.com>

Sent: Tuesday, September 26, 2023 3:03 PM

To: Diane Wizig <diane.wizig@mhillp.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Hi Diane,

Attached for your review and comment is the Administrator's declaration that further explains the notice plan.

Thanks,

Burkett

From: Diane Wizig <diane.wizig@mhillp.com>

Sent: Monday, September 25, 2023 11:10 AM

To: Burkett McInturff jbm@wittelslaw.com; Ethan Roman edr@wittelslaw.com; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Burkett,

We'll get back to you on these items tomorrow.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Burkett McInturff <jbm@wittelslaw.com>

Date: Friday, September 22, 2023 at 12:04 PM

To: Diane Wizig <diane.wizig@mhlip.com>, Ethan Roman <edr@wittelslaw.com>, Matt Matthews <matt.matthews@mhlip.com>, James Chambers <james.chambers@mhlip.com>, David Villarreal <david.villarreal@mhlip.com>, Netra Sreeprakash <netra.sreeprakash@mhlip.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al
Order on Motion to Certify Class

Diane,

Thank you for your email this morning and yesterday afternoon. Attached are our redlines to the documents you circulated yesterday afternoon. Below are a few minutes for your consideration:

1. **Admin Declaration:** We are still in the process of selecting an administrator and will send you a draft of the declaration as soon as it is ready. Please note, however, that as previously discussed because the declaration tracks the contents of the letter and proposed order, it makes more sense for the parties to first work on those documents before ironing out the administrator declaration.
2. **Proposed Order:** We accepted the majority of your comments, including not issuing press releases in connection with the notice campaign, but cannot accept a 30-business day lag between approval of the notice plan and Defendants' provision of the Class List. All of the Notice Plan's other milestones are keyed off of when the Class List is provided. We can agree to 10 business days, which is more than enough time for Defendants to compile the Class List and perform the necessary quality control measures. If Defendants insist on more time, they will need to ask that the Court enter a different date. On the issue of translating the website and call center into Spanish. Please keep in mind that as a court in Brooklyn, Judges Reyes and Ross are accustomed to approving notice in the many languages spoken by New Yorkers. Accordingly, because we are translating the Notice into Spanish, the website and hotline need to also be translated. Not doing so will strike the Court as unfair because it is.
3. **Letter Motion:** Minor redline attached. The main thing we did was move Defendants' contingent approval of the Notice Plan to a footnote. The Spanish issue is also reflected in our redlines.
4. **Long Form Notice:** Redline attached. We cannot agree to delete XOOM's logo. The FJC

guides that “a picture or diagram may help [the] class self-identify as members, or otherwise determine whether they are included” and that parties should “[c]onsider a graphic to help readers understand that they are included.” Xoom’s logo is the only graphic that accomplishes this.

5. **Short Form Notice:** Other than the logo issue mentioned above, we made only a minor wordsmithing change. As for the font size, let’s keep it at 12 point for this submission so the Court can read it. The Administrator will adjust the font size to fit the appropriate format (postcard or email).

Finally, regarding the charge data discussed on our September 18 call, your recollection is not correct. I said it would be “fair” for Defendant to hold off on providing the Class List until after the Court enters the Notice Plan, because you pointed out that that is what the Notice Plan says. I did not agree that Defendants could further delay producing charging data that they should have produced long ago. September 26 is more than enough time to produce a simple update of Defendants’ prior data pull. If Defendants cannot provide the information in this timeframe, we will withdraw our motion once the required data is received and confirmed for accuracy.

We are happy to jump on a call today or Monday to discuss redlines in the above documents that still pose an issue, although give our substantial accommodation of Defendants’ input we believe that the documents are ready to be finalized.

Thank you,

Burkett

From: Diane Wizig <diane.wizig@mhlip.com>

Sent: Friday, September 22, 2023 12:44 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhlip.com>; James Chambers <james.chambers@mhlip.com>; David Villarreal <david.villarreal@mhlip.com>; Netra Sreeprakash <netra.sreeprakash@mhlip.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Burkett,

Our client confirmed the following in response to your inquiries:

- Mailing addresses and email addresses were gathered and maintained for all class members. Email addresses are automatically removed if multiple bounce-backs are received.
- The only two language preference options are English and Spanish.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Diane Wizig <diane.wizig@mhllp.com>

Date: Thursday, September 21, 2023 at 4:41 PM

To: Burkett McInturff <jbm@wittelslaw.com>, Ethan Roman <edr@wittelslaw.com>, Matt Matthews <matt.matthews@mhllp.com>, James Chambers <james.chambers@mhllp.com>, David Villarreal <david.villarreal@mhllp.com>, Netra Sreeprakash <netra.sreeprakash@mhllp.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al
Order on Motion to Certify Class

Burkett,

Our redlines to your four draft documents are attached. Please let us know when you anticipate sending us the Notice Plan declaration for our review.

I also want to make sure we're on the same page with respect to the contact and language information we'll be able to provide you about the class. As reflected in your letter to Judge Reyes, we are working to confirm the addresses XOOM stores for the class as well as the language preferences XOOM offered and stored for the class. I now anticipate being able to provide that information tomorrow instead of next week. But to be clear, and as I said on our call, the percentages mentioned in your email this morning cannot be known until the class list is pulled.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Diane Wizig <diane.wizig@mhllp.com>

Date: Thursday, September 21, 2023 at 11:54 AM

To: Burkett McInturff <jbm@wittelslaw.com>, Ethan Roman <edr@wittelslaw.com>, Matt Matthews <matt.matthews@mhllp.com>, James Chambers <james.chambers@mhllp.com>, David Villarreal <david.villarreal@mhllp.com>, Netra Sreeprakash <netra.sreeprakash@mhllp.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Burkett,

When we talked on Monday we agreed on a path forward for all these items. The additional week to submit notice documents was requested by consent in part so that XOOM could have more time to review and comment on your drafts. We have been working diligently and already planned to get you our comments today even though your deadline is now a week away. The extension was also intended to allow XOOM more time to get you answers to the questions about contact information and language preferences. I told you I anticipated being able to get that information next week before your drafts are due, and I can confirm that we have every intention of sticking to that timeline.

As for charge data, like I told you on our call, XOOM will not duplicate efforts by pulling the additional charge data now when it inevitably will need to be supplemented later. You confirmed that was "fair" in your view and that the only class data you are seeking in the short-term is the class list. You also confirmed that it would be acceptable for us to produce the class list after a notice plan is approved by the court-ordered deadline as contemplated in your drafts. If your position has changed and you are now demanding that we gather and produce a class list and charge data in three business days, I would urge you to reconsider.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Burkett McInturff <jbm@wittelslaw.com>

Date: Thursday, September 21, 2023 at 9:20 AM

To: Diane Wizig <diane.wizig@mhlip.com>, Ethan Roman <edr@wittelslaw.com>, Matt Matthews <matt.matthews@mhlip.com>, James Chambers <james.chambers@mhlip.com>, David Villarreal <david.villarreal@mhlip.com>, Netra Sreeprakash <netra.sreeprakash@mhlip.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane,

I am following up on the notice documents we provided you on September 13. Defendants have now had these documents for more than a week and your below email from September 15 states that you will “endeavor to get [us] any comments by early next week,” which has now passed. Please send us your comments today.

Also, per your commitments to us during our September 18 call (as memorialized in ECF No. 154), we are still waiting for Defendants to provide:

1. The approximate percentage of Class Members for whom XOOM: (a) has both mailing and email addresses, (b) has only mailing addresses, (c) has only email addresses, (d) does not have mailing or email addresses.
2. The approximate percentage of Class Members that have indicated a preference for communication in a non-English language (broken down by each non-English language).

Finally, as discussed during the September 18 call, we still need Defendants to supplement XOOM’s prior data productions to include charging data for (i) all New York XOOM customers who received service under the relevant supply costs language beyond the previous January 1, 2020 cutoff date, up to present, and (ii) any other XOOM customers that meet the Class Definition whose charging data has not been produced. If we do not receive Defendants’ supplemented production by September 26, we will have no choice but to involve Judge Reyes.

Thank you,

Burkett

From: Diane Wizig <diane.wizig@mhlip.com>

Sent: Friday, September 15, 2023 4:19 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhlip.com>; James Chambers <james.chambers@mhlip.com>; David Villarreal <david.villarreal@mhlip.com>; Netra Sreeprakash <netra.sreeprakash@mhlip.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Burkett,

Thank you for passing these along. We are not going to be in a position to send you our substantive feedback by close of business today. However, we will endeavor to get you any comments by early next week.

One thing I do want to raise now is that I noticed the proposed filings are addressed to Judge Reyes. But at the last status conference, Judge Reyes informed the parties that all things related to class certification should be presented to Judge Ross. Is there a reason you're presenting them to Judge Reyes instead?

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Burkett McInturff <jbm@wittelslaw.com>

Date: Wednesday, September 13, 2023 at 5:19 PM

To: Ethan Roman <edr@wittelslaw.com>, Diane Wizig <diane.wizig@mhlip.com>, Matt Matthews <matt.matthews@mhlip.com>, James Chambers <james.chambers@mhlip.com>, David Villarreal <david.villarreal@mhlip.com>, Netra Sreeprakash <netra.sreeprakash@mhlip.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al
Order on Motion to Certify Class

Diane and Matt,

Attached for your review and comment are the following documents:

1. Plaintiffs' letter application for approval of the notice plan;
2. The proposed order;
3. The long-form notice; and
4. The short-form notice.

As discussed during Monday's meet and confer, we are eliciting your input on these documents in the hopes of presenting the Court an uncontested notice plan.

Please also note that the letter application references the declaration of a notice administrator that describes the notice plan. Because this declaration tracks the contents of the letter and proposed order, it makes more sense for the parties to first work on those documents before ironing out the administrator declaration.

Finally, to have time to meet and confer on any discussion topics in advance of next Thursday's deadline to provide the Court with the proposed notice plan, we ask that you please give us your feedback on the attached documents by close of business on Friday.

Thank you,

Burkett

From: Ethan Roman <edr@wittelslaw.com>

Sent: Monday, September 11, 2023 4:08 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Diane Wizig <diane.wizig@mhllp.com>; Matt Matthews <matt.matthews@mhllp.com>; James Chambers <james.chambers@mhllp.com>; David Villarreal <david.villarreal@mhllp.com>; Netra Sreeprakash <netra.sreeprakash@mhllp.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane and Matt –

Following up on today's meet and confer, the following list contains the information for the Class that we need XOOM to produce to allow us to provide Class notice. Please provide this information for each account:

1. XOOM enrollment number
2. All customer names
3. Service address
4. Billing/contact address
5. All other physical addresses
6. All email addresses
7. All phone numbers

We also requested that XOOM provide the following additional information to assist with the logistics of providing Class notice:

8. The approximate percentage of Class Members for whom XOOM: (a) has both mailing and email addresses, (b) has only mailing addresses, (c) has only email addresses, (d) does not have mailing or email addresses.
9. The approximate percentage of Class Members that have indicated a preference for communication in a non-English language (broken down by each non-English language).

Relatedly, please supplement XOOM's prior data productions to include charging data for (i) all New York XOOM customers who received service under the relevant supply costs language beyond the previous January 1, 2020 cutoff date, up to present, and (ii) any other XOOM customers that meet the Class Definition whose charging data has not been produced.

Thank you.

Ethan

Ethan D. Roman

WMP | Senior Associate
305 Broadway, 7th Floor | New York, NY 10007
Phone: 914 775 8862 x106 | Fax: 914 775 8862



From: Burkett McInturff <jbm@wittelslaw.com>

Sent: Saturday, September 9, 2023 5:41 PM

To: Diane Wizig <diane.wizig@mhlip.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhlip.com>; James Chambers <james.chambers@mhlip.com>; David Villarreal <david.villarreal@mhlip.com>; Netra Sreeprakash <netra.sreeprakash@mhlip.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane,

Let's talk on Monday at 3:00 Eastern.

I'll circulate a dial in.

Thanks,

Burkett

From: Diane Wizig <diane.wizig@mhlip.com>

Sent: Saturday, September 9, 2023 12:12 AM

To: Burkett McInturff <jbm@wittelslaw.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhlip.com>; James Chambers <james.chambers@mhlip.com>; David Villarreal <david.villarreal@mhlip.com>; Netra Sreeprakash <netra.sreeprakash@mhlip.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Burkett,

Like I mentioned yesterday, our team had a number of critical deadlines today, so a call was not possible.

We continue to think that seeing your drafts would help facilitate discussion of the points you've raised, but we will make ourselves available for a call sooner to discuss your concerns if that is your preference. We remain available Monday afternoon and Tuesday morning.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Burkett McInturff <jbm@wittelslaw.com>

Sent: Friday, September 8, 2023 1:24 PM

To: Diane Wizig <diane.wizig@mhlip.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhlip.com>; James Chambers <james.chambers@mhlip.com>; David Villarreal <david.villarreal@mhlip.com>; Netra Sreeprakash <netra.sreeprakash@mhlip.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane,

I just left you a voicemail. Please call me back at (910) 476-7253 at your earliest convenience. As you well know, to timely and properly effectuate Class notice the parties need to work on (i) prompt production of the correct and updated Class list, (ii) identifying the percentages of Class Members for whom Defendants have only email and/or mailing addresses and any gaps, and (iii) and whether and the extent to which Defendants have records of Class Member preferred languages.

We are thus surprised that you are now suggesting that the notice plan and proposed notices we are

going to circulate early next week would involve a discussion of those issues. You understand that a notice plan necessarily requires that the parties agree on the Class list and that issues regarding what contact information and language preferences Defendants have for the Class will have to be resolved first (e.g. Defendant has reliable email addresses for 85% of the Class and 5% of the Class are indicated in Defendants' records as preferring Spanish communication), and that these topics are separate and apart from any discussion of class notice contents or the scope of the notice program. Similarly, any notice plan assumes the parties have worked out how the defendant will transfer the Class list to Class Counsel. This is why we asked last Thursday for Defendant to promptly supplement its data production and to meet and confer on notice issues, including production of the Class list. There is no reason to delay these tasks by waiting to address them only after you have seen our proposed notice plan and notice.

To avoid involving the Court on this matter, please promptly advise us as to when Defendants will (a) supplement its data production and (b) be ready to discuss these basic class notice issues.

Thank you,

Burkett

From: Diane Wizig <diane.wizig@mhillp.com>

Sent: Thursday, September 7, 2023 8:41 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>; Steven Wittels <sslw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Responses to the three multi-part questions you posed for the first time today can be addressed in our comments to your drafts as necessary and appropriate. Let us know when we will receive those and we will do our best to plan accordingly.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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return e-mail and delete this e-mail from your system.

From: Burkett McInturff <jbm@wittelslaw.com>

Sent: Thursday, September 7, 2023 3:54 PM

To: Diane Wizig <diane.wizig@mhillp.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane,

Ethan's statement that we would share a draft plan is independent of the parties' need to work together to ensure prompt production of the correct and updated class list and to identify the means of notice and Class Members' preferred languages. It has now been a week since the Court certified the Class and we are perplexed as to why Defendants are claiming they will not be in a position to discuss these items early next week.

Please promptly advise us as to when next week you will have the information you need to have this discussion.

Thank you,

Burkett

From: Diane Wizig <diane.wizig@mhillp.com>

Sent: Thursday, September 7, 2023 3:59 PM

To: Burkett McInturff <jbm@wittelslaw.com>; Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>; Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Nathan Rice <nar@wittelslaw.com>

Subject: Re: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Hi Burkett,

We don't agree that a meet and confer is required under Judge Reyes's rules for a nondispositive motion to stay. That being said, we certainly are not opposed to trying to resolve this and avoid court intervention by setting up a call to talk through any issues related to the stay that you think might be best discussed by phone. We are traveling and have several deadlines tomorrow that make a call this week unworkable, but we are largely available next week. We can do Monday after 1pm or

Tuesday after 11am eastern.

As for the class notice, Ethan's last note said that you would move forward with a draft plan to share with us for comments. We think that's a more efficient path forward, especially because we will not be in a position to discuss the items you mention below by early next week.

Thanks,

Diane S. Wizig

Partner

McDowell Hetherington LLP

P: 713-333-5889 F: 713-337-8850

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From: Burkett McInturff <jbm@wittelslaw.com>

Date: Thursday, September 7, 2023 at 10:31 AM

To: Ethan Roman <edr@wittelslaw.com>, Diane Wizig <diane.wizig@mhlip.com>, Matt Matthews <matt.matthews@mhlip.com>, James Chambers <james.chambers@mhlip.com>, David Villarreal <david.villarreal@mhlip.com>, Netra Sreeprakash <netra.sreeprakash@mhlip.com>, Steven Wittels <slw@wittelslaw.com>, Tiasha Palikovic <TPalikovic@wittelslaw.com>, Nathan Rice <nar@wittelslaw.com>

Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al
Order on Motion to Certify Class

Diane,

I am following up on my colleague Ethan's September 1 request for a meet and confer, which was reiterated again yesterday. Please provide your availability for a call this week. Defendant's delay in scheduling the meet and confer is prejudicing Plaintiffs' ability to prepare the proposed notice plan for submission to the Court.

Please also be prepared to discuss at the meet and confer the following logistics issues related to class notice:

1. Defendant's plans for promptly compiling and producing the class list to Class Counsel, which list should be updated to include (i) all New York XOOM customers who received service under the relevant supply costs language beyond the previous January 1, 2020 cutoff date, up to present, (ii) all XOOM customers who rolled over from fixed to variable plans, and (iii) any other XOOM customers that meet the Class Definition.

2. The approximate percentage of Class Members for whom XOOM: (a) has both mailing and email addresses, (b) has only mailing addresses, (c) has only email addresses, (d) does not have mailing or email addresses.
3. The approximate percentage of Class Members that have indicated a preference for communication in a non-English language (broken down by each non-English language).

Thank you,

J. Burkett McInturff

WMP | Partner
305 Broadway, 7th Floor | New York, NY 10007
Phone: 910 476 7253 | Fax: 914 775 8862



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From: Ethan Roman <edr@wittelslaw.com>
Sent: Wednesday, September 6, 2023 1:52 PM
To: Diane Wizig <diane.wizig@mhillp.com>; Matt Matthews <matt.matthews@mhillp.com>; James Chambers <james.chambers@mhillp.com>; David Villarreal <david.villarreal@mhillp.com>; Netra Sreeprakash <netra.sreeprakash@mhillp.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Burkett McInturff <jbm@wittelslaw.com>
Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Diane –

We do not agree to a stay. Because any application for a stay needs to be addressed Magistrate Judge Reyes per his Individual Rules, the parties need to meet and confer if Defendants plan to seek one. Please provide your availability for that meet and confer. Furthermore, we plan to oppose any petition seeking an interlocutory appeal pursuant to Rule 23(f) as Judge Ross's certification order here does not warrant one.

With respect to the Class notice plan, regardless of the outcome of any motion for a stay there is a Court-ordered deadline to provide a proposed form of notice and plan for distributing notice by September 21. We will draft those and send them to you for any comments. If necessary, the parties can meet and confer regarding Class notice then.

Best,
Ethan

Ethan D. Roman

WMP | Senior Associate
305 Broadway, 7th Floor | New York, NY 10007
Phone: 914 775 8862 x106 | Fax: 914 775 8862



From: Diane Wizig <diane.wizig@mhllp.com>
Sent: Tuesday, September 5, 2023 4:00 PM
To: Ethan Roman <edr@wittelslaw.com>; Matt Matthews <matt.matthews@mhllp.com>; James Chambers <james.chambers@mhllp.com>; David Villarreal <david.villarreal@mhllp.com>; Netra Sreeprakash <netra.sreeprakash@mhllp.com>
Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Burkett McInturff <jbm@wittelslaw.com>
Subject: RE: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Hi Ethan,

We intend to file a Rule 23(f) petition seeking the Second Circuit's review of the class certification order. We therefore believe that the most efficient course is to stay proceedings in the district court pending Second Circuit review. I anticipate that we'll be in agreement on the need for a stay given that, otherwise, the parties will expend resources on additional discovery and class notice that could become at least partially moot.

Can you please confirm that you are amenable to a stay pending Second Circuit review so that we can put together an agreed motion?

Thanks,

Diane S. Wizig
Partner
McDowell Hetherington LLP
P: 713-333-5889 F: 713-337-8850

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From: Ethan Roman <edr@wittelslaw.com>

Sent: Friday, September 1, 2023 10:27 AM

To: Matt Matthews <matt.matthews@mhllp.com>; Diane Wizig <diane.wizig@mhllp.com>; Emily Felix <emily.felix@mhllp.com>; James Chambers <james.chambers@mhllp.com>; David Villarreal <david.villarreal@mhllp.com>

Cc: Steven Wittels <slw@wittelslaw.com>; Tiasha Palikovic <TPalikovic@wittelslaw.com>; Burkett McInturff <jbm@wittelslaw.com>

Subject: FW: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on Motion to Certify Class

Matt and Diane –

Now that the Court has certified the Class in this case, please supplement XOOM's Class data production to include all New York customers who received the relevant supply costs language beyond the previous January 1, 2020 cutoff date, up to present. Please further ensure that this production includes data for those XOOM customers who rolled over from fixed to variable plans consistent with XOOM's December 6, 2022 data production.

Furthermore, pursuant to the Court's directive for Class Counsel to submit a proposed notice plan by September 21, please provide your availability next week for a meet and confer on notice issues, to include production of the Class list.

Best,
Ethan

Ethan D. Roman

WMP | Senior Associate
305 Broadway, 7th Floor | New York, NY 10007
Phone: 914 775 8862 x106 | Fax: 914 775 8862



From: ecf_bounces@nyed.uscourts.gov <ecf_bounces@nyed.uscourts.gov>

Sent: Thursday, August 31, 2023 10:23 AM

To: nobody@nyed.uscourts.gov

Subject: Activity in Case 1:18-cv-02949-ARR-RER Mirkin et al v. XOOM Energy, LLC et al Order on

Motion to Certify Class

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Eastern District of New York

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Case Name: Mirkin et al v. XOOM Energy, LLC et al

Case Number: [1:18-cv-02949-ARR-RER](#)

Filer:

Document Number: [152](#)

Docket Text:

ORDER granting [131] Motion to Certify Class. For the reasons set forth in the attached Opinion & Order, plaintiff's motion is granted. I certify the proposed class, appoint Susanna Mirkin as class representative, and appoint Wittels McIntuff Palikovic as lead class counsel. Within 21 days, class counsel shall submit a proposed form of notice to class members and a proposed plan for distributing notice. Ordered by Judge Allyne R. Ross on 8/31/2023. (NH)

1:18-cv-02949-ARR-RER Notice has been electronically mailed to:

Steven L. Wittels slw@wittelslaw.com, edr@wittelslaw.com, jbm@wittelslaw.com,
jlh@wittelslaw.com, sdc@wittelslaw.com, sjr@wittelslaw.com, tpalikovic@wittelslaw.com

Andrey Belenky abelenky@kblit.com, 3931873420@filings.docketbird.com

Daniel Hymowitz daniel@hymowitzlaw.com, mail@hymowitzlaw.com

J. Burkett McInturff jbm@wittelslaw.com, sso@wittelslaw.com

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David Lee Villarreal david.villarreal@mhlip.com, patricia.flores@mhlip.com

James Monroe Chambers james.chambers@mhlip.com

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